

Before the  
Federal Communications Commission  
Washington, D.C. 20554

	)	
In the Matter of	)	
	)	
Amendment of Section 73.606(b),	)	MB Docket No. 02-280
Table of Allotments,	)	RM-10558
Television Broadcast Stations.	)	
(Blanco, Texas)	)	
	)	
	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: September 13, 2002**

**Released: September 18, 2002**

Comment Date: November 12, 2002  
Reply Comment Date: November 27, 2002

By the Chief, Video Division:

1. The Commission has before it a petition for rule making filed by Univision Television Group, Inc. (“Univision”), an applicant for NTSC channel 52 at Blanco, Texas. Univision requests the substitution of channel 17 for channel 52 at Blanco.

2. Univision was the winning bidder in FCC Auction No. 80 (July 2000) for NTSC channel 52 at Blanco, Texas. Subsequently, the Commission adopted new allocation and service rules for the radio spectrum at 698-746 MHz, which cleared the lower 700 MHz Band for use by fixed and mobile services.<sup>1</sup> Under the new reallocation plan, the Commission stated that it would dismiss all pending petitions for NTSC channel allotments in the Lower 700 MHz. With regard to applications for construction permits, the Commission stated it would open a 45-day window for applicants to request a change in channel for their pending applications or petitions for rule making.<sup>2</sup> In response, Univision filed a petition for reconsideration requesting that the Commission exclude it from the category of applicants required to amend their applications to specify an in-core channel or DTV operation, or face dismissal. In the alternative, Univision requested that the Commission grant its pending petition for rule making proposing the substitute NTSC channel 17 for NTSC channel 52.

<sup>1</sup> Reallocation and Service Rules for 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, *Report and Order*, 17 FCC Rcd 1022 (2002) released January 18, 2002 (“*Lower 700 MHz R&O*”); and see also, *Memorandum Opinion and Order*, 17 FCC 11613 (2002), released June 14, 2002 (“*Lower 700 MHz MO&O*”).

<sup>2</sup> See *Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Requests for New NTSC Television Stations on Channels 52-59.*, released February 6, 2002, DA 02-270.

Univision stated that adoption of its channel substitution proposal would facilitate the reallocation of services in the lower 700 MHz spectrum while permitting Univision to commence television service in the community of Blanco. The Commission denied Univision request for relief regarding its application, but the directed the Media Bureau to expedite its allotment request to change channels at Blanco.

3. The Univision allotment proposal does not comply in all respects with the spacing requirements to land mobile channel 17 at Houston, Texas. The Commission, however, directed the Media Bureau to consider waiver of the applicable land mobile distance separation criterion for the site proposed in Univision petition. The Commission also stated that such waiver relief, if granted, should be conditioned on Univision agreeing to: (1) accepting interference from current and future 488-494 MHz land mobile facilities operating from base stations located within 50 miles of the Houston reference point and mobile units operating within 30 miles of their associated base stations; and (2) agreeing not to radiate a signal in the Houston area where land mobile operation is permitted with a field strength greater than that permitted by a full power TV station that meets the co-channel distance separation criteria (341.1 km).<sup>3</sup> Our proposal to waive the land mobile spacing requirements to channel 17 in Houston is based upon the special circumstances presented in the Univision case and pursuant to the expressed directions of the Commission. We further note that Univision had remitted to the U.S. Treasury all sums due to this point pursuant to its auction bid. Our action here is not a modification of the Commission's strict policy of not accepting petitions for rule making not meeting the spacing requirements.

4. Accordingly, we seek comments on Univision proposal to substitute channel 17 for channel 52+ at Blanco, Texas. A staff engineering analysis indicates that Channel 17 can be allotted to Blanco, Texas, with a zero offset consistent with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules. Since the community of Blanco is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment. The coordinates for channel 17 at Blanco are North Latitude 29-42-58 and West Longitude 98-30-39.

5 Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Blanco, Texas	52+	17

6. The Commission's authority to institute rule-making proceedings, showings required cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated

<sup>3</sup> See *Lower 700 MHz MO&O*, supra.

by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before November 12, 2002, and reply comments on or before November 27, 2002, and need to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Scott R. Flick  
Brendan Holland  
Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037-1128  
(Counsel for Univision Television Group, Inc.)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b). See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981. The Regulatory Flexibility Act of 1980 would also not apply to rule making proceedings to amend the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules.

9. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment, which has not been served on the person(s) who

filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.). The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). See Electronic Filing of Documents in Rule Making Proceedings, GC Docket No. 97-113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal

Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.